IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1138 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 and 3 to 5 No. No.2 Yes.

SUBHASHCHANDRA C DALWADI

Versus

BABA DHANJI

Appearance:

MR MB GANDHI for Petitioner

MR DK BHATT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/06/98

ORAL JUDGEMENT

This is landlord's revision under section 29(2) of the Bombay Rent Act, 1947 (for short 'Act'). Mr.M.B.Gandhi, learned Counsel for the revisionist has been heard. Inspite of revision of list twice none appeared for the respondent.

The brief facts are that the revisionist filed a suit for eviction of the respondent on grounds of being arrears of rent for morethan six months and for not paying the same after service of notice of demand within the scope of section 12(2) of the Act.

The suit was resisted by the respondent on several grounds including invalidity of notice.

The Trial Court found that the notice was valid and it was neither vague nor illegal. It also found that the case fell within the ambit of section 12(3)(a) of the Act. Accordingly, the decree for eviction, arrears of rent and mesne profits was passed.

An Appeal was preferred. The Appellate Court however, held that notice of demand was illegal and invalid because it did not precisely or exactly disclose the amount of arrears of rent and the tenant respondent being illiterate man was not expected to calculate and know what amount was demanded from him. The Appellate Court further observed that the landlord by serving such notice reserved for himself the right to reject the rent which may be tendered to him on the presumptive ground that the tender was not in accordance with demand. Finding that the notice was invalid the suit for eviction was dismissed by the Appellate Court.It is, therefore, this revision.

It is not the case of concurrent finding recorded by the two Courts regarding invalidity of notice. It has therefore to be seen by this Court in this revision whether the judgment of the lower Appellate Court regarding invalidity of the notice is in accordance with law or not.

After considering the judgment of the lower Appellate Court, I feel that it is patently erroneous and against law. It is full of presumptions. It is not legal judgment but judgment based on ethics and morality which cannot be a substitute for law. In the opinion of the Appellate Bench, it was the duty of the landlord to disclose the exact amount demanded from the tenant.This view of the Appellate Bench is totally erroneous and the case which has been relied upon by the Appellate Court has rather been misapplied against the landlord.

Section 12(2) of the Act simply obliges the landlord to serve notice of demand of rent on the tenant and wait for a period of one month during which the tenant is expected to comply with the demand. Ofcourse

the demand of rent should be specific. If the notice mentions the date from which the rent fell due and also the rate of rent then it cannot be said that the demand made through the notice is unspecified. It cannot be expected from the landlord to calculate the exact amount in the nature of spoon feeding to be easily swallowed by the tenant. Copy of the notice has been filed in this revision. After going through the contents of the notice I find that it was mentioned that the rate of rent was Rs.5.50 p. per month. The date of commencement of tenancy is also mentioned in the notice. It is specified that the tenant was in arrears of rent since 10.12.1977. It was a composite notice of demand of ejectment. The tenancy was determined by giving clear fifteen days notice to vacate the premises. Therefore, from such recital in the notice it can be said that the landlord's demand was of arrears of rent @ Rs.5.50 ps. p.m. with effect from 10.12.1977 upto the date of notice. The tenant in these circumstances could have calculated the exact amount or if illiterate could have taken assistance from some external aid of a literate person. It is in evidence of the tenant that he himself went to the landlord to tender Rs.220/- as arrears of rent. It is difficult to understand if the tenant was unaware of the specific demand how could he approach the landlord with specific sum of Rs.220/-. Notice as it is,therefore, cannot be struck down being vague or illegal. View to the contrary taken by the lower Appellate Court is erroneous and that taken by the Trial Court is in accordance with law. The lower Appellate Court has placed reliance on Bapulal Kalidas Vs. Kashiben 18 GLR Pg.77 and has extracted the following para :

"A vague notice requiring the tenant to pay all arrears of rent and permitted increases, without indicating the actual amount due on that account or the point of time from which the rent and permitted increases at a specified rate are, according to the landlord, in arrears, would afford no real opportunity to the tenant to avail of the facility or benefit of making payment of the arrears due by him before she is sued in ejectment. In fact, such notice while apparently complying with the requirement of law might prove to be a trap to draw the tenant in by leaving the door open for a controversy to be raised later on that full amount of rent and permitted increases was not tendered within the prescribed time limit after the service of the notice."

After quoting aforesaid para the Appellate Judge found that this case helps the tenant and not the landlord. However, in the subsequent paras in this very case it was observed as follows :

> "The demand of standard rent and permitted increases in a notice under Sec.12(2) must be a precise demand, that is to say one that sets out with certainty what according to the landlord is due by the tenant on that account. In other words, the demand must be for a sum specified or it must be made in such a manner that the amount actually claimed becomes definitely ascertainable by reference to some other intrinsic evidence in the notice itself, such as the point of time from which arrears at a specified rate are due or some such or other indication."

It is thus clear from the above para that the demand must be for a sum specified or it must be made in such a manner that the amount actually claimed becomes conveniently ascertainable by reference to some intrinsic evidence in the notice itself, such as the point of time from which the arrears at the specified rent are due or such other indications.

The above portion of the observation has been misapplied by the lower Appellate Court.It clearly shows that if there is intrinsic evidence in the notice from which the date since when the rent at a specified rate is due the notice cannot be struck down being invalid. Since verdict of this case has been wrongly applied by the lower Appellate Court, the judgment stands vitiated and is certainly contrary to law. Notice is perfectly valid. Judgment and Decree of the lower Appellate Court therefore cannot be sustained, whereas the judgment and decree of the trial court have to be restored.

For the reasons given above the revision succeeds and is hereby allowed. Judgment and Decree of the lower Appellate Court are set aside and that of the Trial Court are restored. No order as to costs.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt